

Attachment 3

**FISCAL YEAR (FY) 2018 ANNUAL PLAN
 (Please complete all yellow highlighted fields)**

(Insert Official Name of SWA – not that of an individual)

hereafter referred to as the “State Agency”, has prepared the following plan and statement of assurances for delivering services during FY 2018 (October 1, 2017 through September 30, 2018) to support the administration of foreign labor certification (FLC) programs in accordance with all applicable regulations, policies, procedures, handbooks, manuals, and other directives.

A. Foreign Labor Certification Workload

Category of OFLC Program Services/Activities	FY 2017 Workload <small>Actual per ETA 9127 Report</small>	FY 2018 Workload <small>Completed</small>	FY 2018 Workload <small>Projected</small>	Total Estimated FY 2018 Workload⁽¹⁾ <small>add previous 2 columns</small>
A. Number of H-2A agricultural clearance job orders processed and projected to be processed.				
B. Number of H-2A prevailing wage surveys conducted and projected to be conducted.				
C. Number of H-2A prevailing practice surveys conducted and projected to be conducted.				
D. Number of H-2A housing inspections conducted and projected to be conducted. ⁽²⁾				
E. Number of H-2A range housing inspections conducted and projected to be conducted, as required by 20 CFR 655.230 (if applicable).				
F. Number of H-2B job orders processed and projected to be processed.				
G. Number of Full Time Equivalent (FTE) staff funded by this grant.				

(1) Workload includes completed OFLC program services/activities provided and services/activities planned for the period between October 1, 2016 and September 30, 2018. For completion of this chart, SWAs should refer to data from SWA job order systems and Form ETA 9127 submissions.

(2) Data provided for reporting items should exclude range housing units inspected under 20 CFR 655.230, H-2A Herder Rule for the Temporary Employment of H-2A Foreign Workers in the Herding or Production of Livestock on the Range in the United States

B. H-2B Temporary Nonagricultural Program Activities

Section 214(c)(1) of the INA, 8 U.S.C. 1184(c)(1), requires the Secretary of Homeland Security to consult with “appropriate agencies of the government” before authorizing the classification of aliens as H-2B workers. Under Department of Homeland Security (DHS) regulations at 8 CFR 214.2(h)(6)(iii)(C), an H-2B petition for temporary employment must be accompanied by an approved temporary labor certification from the Department of Labor (DOL), which serves as DOL’s advice to DHS regarding whether a qualified U.S. worker is available to fill the petitioning H-2B employer’s job opportunity and whether a foreign worker’s employment in the job opportunity will adversely affect the wages or working conditions of similarly employed U.S. workers.

In accordance with regulations at 20 CFR Subpart A, the State Agency agrees to carry out all state activities to support DOL’s review and processing of job orders and applications seeking temporary labor certification under the H-2B program. Specifically, the State Agency agrees to carry out the following state activities:

1. **Stakeholder Education and Outreach:** Make available in a conspicuous location on the State Agency website information on how employers can participate in the H-2B program, such as easy-to-understand instructions on how to prepare and submit a job order; a copy of the State Agency job order form that is accessible and can be completed electronically; and current contact information within the State Agency for employers to request technical assistance.

No less frequently than once a year, the State Agency will electronically disseminate to employers who routinely use the H-2B program helpful tips or best practices on preparing high quality job orders, information on any state-specific requirements impacting the material terms or conditions of employer job orders, and the most current version of the State Agency’s job order form and instructions. Where requested and funds permitting, the State Agency will participate in local or state employer roundtables, conferences or other stakeholder forums to present and/or disseminate information related to the H-2B program.

2. **Placement of H-2B Job Orders:** In accordance with funds appropriated under the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*), the State Agency already administers a public labor exchange system that facilitates the placement of employer job orders and referral of prospective U.S. applicants to current and future job opportunities.

The State Agency’s labor exchange system, which is referred to as **insert Labor Exchange System name here**, is accessible to employers required to place a job order in connection with a concurrently filed H-2B *Application for Temporary Employment Certification* with DOL, pursuant 20 CFR 655.16. The State Agency has a capability for employers to place job orders for review in the following manner:

Please check all that apply:

- Self-services by accessing the State Agency's labor exchange system:

[\[Insert State labor exchange system website link here\]](#)

- Staff-assisted job order services by submitting a draft job order at:

[\[Insert State Agency contact information including email address where employers can submit H-2B job orders\]](#)

Please check one of the following:

- The State Agency's job order form and/or system **DOES** contain an entry field or option permitting employers to identify that the job order is being placed in connection with a concurrently submitted *Application for Temporary Employment Certification* for H-2B workers;

OR

- The State Agency's job order form and/or system **DOES NOT** contain an entry field or option permitting employers to identify that the job order is being placed in connection with a concurrently submitted *Application for Temporary Employment Certification* for H-2B workers. Therefore, employers can provide the regulatory required notification to the State Agency in the following manner:

[\[Insert a brief description of how and to whom employers can provide the State Agency with the required notification\]](#)

Please check all that apply:

- The State Agency has submitted with this grant plan a current electronic copy of the form and general instructions employers are required to use to submit job orders.
- The standard job order form and general instructions are easily accessible to employers on a website maintained by the State Agency at:

[\[Insert State Agency website link here\]](#)

3. **Processing of H-2B Job Orders:** Upon receipt, the State Agency will review the job order submitted by the employer for compliance with the regulatory criteria under 20 CFR 655.18¹, as well as any state-specific requirements. In circumstances where a waiver of the required time period for filing an *Application for Temporary Labor Certification* is granted under 20 CFR 655.17 for emergency situations, the State Agency will make every effort to review the proposed or draft job order, upon request by the DOL Certifying Officer.

a. Compliance Review of Job Orders

- The State Agency will notify the DOL Certifying Officer (CO) of any deficiencies within six business days of the date the employer’s job order was received;
- For each deficiency identified, the State Agency will state the reason(s) why the job order fails to meet the criteria under 20 CFR 655.18;
- For each deficiency identified related to a state-specific requirement, the State Agency will provide the applicable statutory or regulatory citation(s) and state the modification(s) needed for the DOL CO to issue a Notice of Acceptance; and
- In circumstances where a timely review of the job by the State Agency order cannot be performed, the State Agency understands that the DOL CO has the authority to issue a Notice of Deficiency (20 CFR 655.31) or Acceptance (20 CFR 655.33) within seven business days of receipt.

b. Processing of Approved Job Orders

- Upon receipt of a Notice of Acceptance under 20 CFR 655.33, the State Agency will perform the following actions when instructed by the DOL CO:
 - Promptly make, on behalf of the employer, any necessary modifications to the job order under 20 CFR 655.32 or amendments granted by the DOL CO under 20 CFR 655.35;
 - Promptly place on its active file the job order approved by the DOL CO, as

¹ *The Department of Labor Appropriations Act, 2016, Division H, Title I of Public Law 114-113 (“2016 DOL Appropriations Act”), provided that the DOL may not use any funds to enforce the definition of corresponding employment found in 20 CFR 655.5 or the three-fourths guarantee rule definition found in 20 CFR 655.20, or any reference thereto. This limitation is continued in FY2018 Further Continuing and Security Assistance Act (2018 Continuing Resolution), Public Law 114-254. Therefore, in order to comply with the 2018 Continuing Resolution, the State Agency will not use any funds provided under this grant to implement these provisions in any manner. The State Agency understands that the 2016 DOL Appropriations Act and 2018 Continuing Resolution did not vacate these regulatory provisions, and they remain in effect, thus imposing a legal duty on H-2B employers, even though the DOL is currently prohibited from using funds to enforce them.*

well as job orders received from other State Workforce Agencies (SWAs) pursuant to 20 CFR 655.16(c), for intrastate clearance until the end of the recruitment period, as specified by the DOL CO (i.e., 21 days before the start date of work set forth in 20 CFR 655.40(c));

- Promptly transmit a copy of the approved job order to other SWAs, as instructed by the DOL CO, with instructions that each SWA keep the approved job order on its active file until the end of the recruitment period;
- Where the DOL CO determines the employer’s job opportunity covers an occupation or industry that is traditionally or customarily unionized, promptly transmit a copy of the approved job order to the central office of the State Federation of Labor and any of local union office(s) representing employees in the same or substantially equivalent job classification in the area(s) in which work will be performed under the approved job order; and
- To the extent practicable, the State Agency agrees to maintain an up-to-date listing of contacts associated with the central office of the State Federation of Labor and office(s) of local union(s) representing employees in occupations traditionally or customarily unionized.

c. Referral of Qualified and Available U.S. Workers

- The State Agency’s public labor exchange services has the capability, whether by self-service or staff-assisted services, to apprise prospective U.S. workers of all the material terms and conditions of the employer’s job opportunity prior to referral, as required by 20 CFR 655.47;
- The State Agency will use its public labor exchange services (i.e., self-service job bank system and/or one-stop career centers) to refer to the employer all qualified U.S. workers who apply for the job opportunity or on whose behalf a job application is made. Please note that these activities will be covered by existing Wagner-Peyser formula grants and not by the FLC grants that are the subject of this TEGL;
- Upon request by the DOL CO, the State Agency will make available records of U.S. workers referred against an approved job order to assist the DOL CO in making a final determination on the employer’s *Application for Temporary Employment Certification*, as specified in 20 CFR 655.50; and
- For complaints against an employer about a specific H-2B job order to which U.S. workers were referred, the State Agency agrees to utilize the existing complaint system for public labor exchange services established under 20 CFR 658, Subpart E. Please note that these activities will be covered by existing Wagner-Peyser formula grants and not by the FLC grants that are the subject of this TEGL.

4. **Post-Determination Services:** The State Agency agrees to provide support services to the DOL CO after a final determination is issued under 20 CFR 655.50 in the following manner:
- In accordance with 20 CFR 655.57 and upon request by the DOL CO, the State Agency agrees to promptly provide information concerning the availability of U.S. workers to replace some or all of the qualified U.S. workers who were initially deemed available in support of a partial certification or denial determination on the employer's *Application for Temporary Employment Certification*;
 - In accordance with 29 CFR 503.7, the State Agency agrees to refer to the appropriate office of the Wage Hour Division any complaint or report of a violation received by any person of the obligations imposed by 8 U.S.C. 1184(c), INA section 214(c), 20 CFR part 655, Subpart A, or 29 CFR part 503 covering the geographic area in which the reported violation is alleged to have occurred, and provide a copy of such referral to the DOL CO at h2bcomplaints.chicago@dol.gov; and
 - The State Agency agrees to cooperate and make available all appropriate records and information upon request from any employee or agent of the DOL who is exercising or attempting to exercise the Department's authority pursuant to 8 U.S.C. 1184(c), including investigations as described in 29 CFR 503.25.

C. H-2A Temporary Agricultural Program Activities

Section 218(a)(1) of the INA, 8 U.S.C. 1188, authorizes the Secretary of Homeland Security to permit employers to import foreign workers to perform agricultural labor or services of a temporary or seasonal nature where the DOL certifies that there are not sufficient qualified U.S. workers available to fill the petitioning H-2A employer's job opportunity and a foreign worker's employment in the job opportunity will not adversely affect the wages or working conditions of similarly employed U.S. workers.

In accordance with DOL regulations at 20 CFR Subpart B, the State Agency agrees to carry out all state activities to support DOL's review and processing of job orders and applications seeking temporary labor certification under the H-2A program. Specifically, the State Agency agrees to carry out the following state activities:

1. **Stakeholder Education and Outreach:** Make available in a conspicuous location on the State Agency website information on how employers can participate in the H-2A program, such as easy-to-understand instructions on how to prepare and submit the Form ETA-790 *Agricultural and Food Processing Clearance Order*, request a pre-occupancy inspection of housing for farmworkers (*if applicable*), and current contact information within the State Agency for employers to request technical assistance.

No less frequently than once a year, the State Agency will electronically disseminate to employers who routinely use the H-2A program helpful tips or best practices on preparing high quality job orders and, if applicable, information on any state-specific requirements (e.g., current prevailing practices or normal and accepted requirements)

impacting the material terms or conditions of employer job orders. Where requested and funds permitting, the State Agency will participate in local or state employer roundtables, conferences or other stakeholder forums to present and/or disseminate information related to the H-2A program.

2. **Placement of H-2A Job Orders:** In accordance with funds appropriated under the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*), the State Agency already administers a public labor exchange system that facilitates the placement of employer job orders and referral of prospective U.S. applicants to current and future job opportunities.

The State Agency's labor exchange system is publicly accessible and possesses the capability for employers to submit the Form ETA-790 and all supporting documentation in connection with a future filed H-2A *Application for Temporary Employment Certification* (Form ETA-9142A) with DOL, pursuant 20 CFR 655.121. More specifically, the State Agency requires that employers submit the Form ETA-790 for review in the following manner:

[Insert State Agency contact information including email address where employers can submit H-2A job orders]

3. **Processing of H-2A Job Orders:** Upon receipt, the State Agency will review the job order submitted by the employer for completeness, obvious errors or inaccuracies, and compliance with the regulatory criteria under 20 CFR 655.122 and 20 CFR 653, subpart F. In circumstances where a waiver of the required time period for filing an H-2A Application is granted under 20 CFR 655.134 for emergency situations, the State Agency will make every effort to review the proposed or draft job order, upon request by the DOL Certifying Officer.

- a. Compliance Review of Job Orders

- The State Agency will notify the employer of any deficiencies within seven calendar days of the date the employer's job order was received;
- In circumstances where deficiencies are identified, the State Agency will provide written notification to the employer stating the reason(s) why the job order fails to meet the regulatory criteria and offering an opportunity to respond to the deficiencies within five calendar days after receipt of the State Agency's written notification;
- The State Agency agrees to respond within three calendar days after receipt of the employer's response; and
- In circumstances where a timely review of the job order cannot be performed, the State Agency understands that the employer is permitted to use the emergency filing procedures for filing an H-2A application set forth in 20 CFR 655.134.

b. Processing of Approved Job Orders

- Upon determining the job order meets the regulatory criteria, whether by the State Agency or the DOL CO in the NOA under 20 CFR 655.143, the State Agency will promptly (1) provide written notification (preferably using email) to the employer and, if applicable, the employer's authorized representative and include the State Agency's Job Order Number (if available), and (2) place the approved job order in intrastate clearance and commence recruitment of U.S. workers;
- The State Agency agrees to keep the approved job order on its active file until the end of the recruitment period (i.e., 50 percent of the period of employment), as set forth in 20 CFR 655.135(d);
- Where the approved job order includes worksites in an area of intended employment that falls within the jurisdiction of more than one SWA, the State Agency agrees to forward a copy of the approved job order to other SWAs serving the area of intended employment with instructions to place a copy of the approved job order on its active file until the end of the recruitment period;
- Upon receipt of a NOA under 20 CFR 655.143, the State Agency will perform the following actions when instructed by the DOL CO:
 - In the case of emergency situations, promptly place on its active file the job order approved by the DOL CO, as well as job orders received from other SWAs, for intrastate clearance until the end of the recruitment period, as set forth in 20 CFR 655.135(d); and
 - Promptly transmit a copy of the approved job order to other SWAs, as instructed by the DOL CO, with instructions that each SWA keep the approved job order on its active file under the end of the recruitment period.

c. Referral of Qualified and Available U.S. Workers

- The State Agency's public labor exchange services has the capability to apprise prospective U.S. workers of all the material terms and conditions of the employer's job opportunity prior to referral, as required by 20 CFR 655.155;
- The State Agency will use its public labor exchange services (i.e., one-stop career center system) to refer to the employer all qualified U.S. workers who apply for the job opportunity or on whose behalf a job application is made. Please note that these activities are covered by existing Wagner-Peyser formula grants and not by the FLC grants that are the subject of this TEGL; and
- Upon request by the DOL CO, the State Agency will make available records of U.S. workers referred against an approved job order to assist the DOL CO in making a final determination on the employer's *Application for Temporary*

Employment Certification, as specified in 20 CFR 655.160.

- 4. Conducting Prevailing Wage Surveys:** This section of the grant plan identifies the schedule of the agricultural prevailing wage surveys (including logging activities) the State Agency plans to conduct during the performance period of the grant, including anticipated survey timeframes by area (e.g., statewide, regional), crops or other agricultural activities/commodities, survey means (e.g., field survey, telephone survey) and approximately when wage results are expected to be transmitted to the OFLC National Office (via the Forms ETA-232) for review.
- To the extent practicable, the State Agency has prioritized its limited resources on conducting wage surveys in the major crops or other agricultural activities/commodities where seasonal H-2A workers are regularly employed and, where practicable, at a broader wage reporting area (e.g., statewide) that will yield statistically valid wage findings from year to year, particularly those agricultural activities paying workers on a piece rate basis;
 - In circumstances where substantial dissimilarities in crop or related conditions exists in different parts of the state, the State Agency may use sub-state reporting areas for conducting prevailing wage surveys; and
 - The State Agency agrees to submit all completed and signed Form ETA-232/232A prevailing wage survey findings to the DOL OFLC National Office in accordance with instructions contained in this TEGL.

[SWA schedule of wage surveys inserted here and, if necessary, include attachments]

Survey Timeframes	Survey Areas (e.g., statewide, regional)	Crops/ Agricultural Commodities	Survey Means (e.g., field survey, telephone)	Survey Transmission Timeframe to OFLC

5. Conducting Prevailing Practice and Normal/Accepted Requirements Surveys: This section of the grant plan identifies the schedule of the agricultural prevailing practice and normal and accepted requirement surveys (including logging activities) the State Agency plans to conduct during the performance period of the grant in accordance with ETA Handbook No. 398, including anticipated survey timeframes by area (e.g., statewide, regional) and crops or other agricultural activities/commodities, and approximately when employment practice results are expected to be transmitted to the OFLC CNPC) for review.

The State Agency agrees to submit all completed prevailing practice and normal and accepted requirement surveys promptly to the DOL OFLC CNPC in accordance with instructions contained in this TEGL.

[SWA schedule of employment practice surveys inserted here and, if necessary, include attachments]

If this is the same as provided above, please indicate "Same survey schedule", without completing this table.

Survey Timeframes	Survey Areas (e.g., statewide, regional)	Crops/ Agricultural Commodities	Survey Means (e.g., field survey, telephone)	Survey Transmission Timeframe to OFLC

6. Scheduling and Conducting Housing Inspections:

- Employer-Provided Housing. In accordance with 20 CFR 655.122(d)(1)(i), the State Agency agrees to schedule and conduct **pre-occupancy inspections of housing** to be furnished to U.S. and H-2A workers who are not reasonably able to return to their place of residence the same day. Employer-provided housing must meet the full set of DOL Occupational Safety and Health Administration (OSHA) standards set forth at 29 CFR 1910.142, or the full set of standards at 20 CFR 654.404 through 654.417, whichever are applicable under 20 CFR 654.401. Requests by employers whose housing does not meet the applicable standards for conditional access to the interstate clearance system, will be processed under the procedures set forth at 20 CFR 654.402. Special requirements for range housing are provided below;
- Rental and/or Public Accommodations.
 - The State Agency **DOES NOT** have jurisdiction to inspect rental and/or public accommodation housing.
 - The State Agency **DOES** have jurisdiction under a state or local law/regulation to perform an inspection of rental and/or public accommodation housing.

[Insert citation of state or local law/regulation and the criteria under which the inspections of rental or public accommodation housing will be performed]

- Range Housing. If applicable, the State Agency agrees to schedule and conduct inspections of range housing and certify that such housing used on the range is sufficient to accommodate the number of certified workers and meets the requirements under 20 CFR 655.230 and all applicable standards contained in 20 CFR 655.235;
- The State Agency agrees to develop and maintain a plan to schedule housing inspections prior to filing of job order for employers who regularly use the H-2A program and, to the extent practicable, actively encourage employers to have housing ready for inspection at time of filing job order or earlier;
- The State Agency agrees to conduct housing inspections in accordance with applicable local, state or federal standards and provide notification to the employer of any deficiencies, request correction in five calendar days, and re-inspect to determine compliance;

- The State Agency agrees to provide a copy of the approved housing inspection or other official certification document to the employer and, if applicable, to the employer’s authorized representative;
- Except in circumstances where the DOL has a special procedure or as permitted by 20 CFR 655.234, the State Agency agrees to schedule and complete the required housing inspection and submit notification (e.g., report, email) no later than 30 days before the start date of work to the DOL CNPC regarding whether housing is approved or not approved at H2ASWA.Chicago@dol.gov; and
- The State Agency agrees to promptly notify the DOL CNPC of any changes in employer provided housing and the results of any inspections conducted on substitute housing.
- Alternative Housing Inspection Methods or Arrangements.

The State Agency **DOES NOT** use alternative methods or arrangements for conducting pre-occupancy housing inspections. The State Agency is solely responsible for scheduling and conducting pre-occupancy housing inspections.

The State Agency **DOES** use alternative methods, memoranda of understanding, or other contractual arrangements with the following agency(ies)/organization(s) to assist in conducting pre-occupancy housing inspections:

[Insert name of state or local housing authority or other entity assisting the SWA in conducting housing inspections]

The State Agency has submitted with this grant plan a current electronic copy of the memorandum of understanding or other contractual arrangement demonstrating that pre-occupancy housing inspections will be scheduled and conducted in a manner that meets applicable regulatory standards and timeframes.

7. **Post-Determination Services:** The State Agency agrees to provide support services to the DOL CO after a final determination in the following circumstances:

- In accordance with 20 CFR 655.166 and upon request by the DOL CO, the State Agency agrees to promptly provide information concerning the availability of U.S. workers to replace some or all of the qualified U.S. workers who were initially deemed available in support of a partial certification or denial determination on the employer’s H-2A Application;
- The State Agency agrees to cooperate and make available all appropriate records and information upon request from any Federal officials assigned to perform an investigation, inspection, or law enforcement function pursuant to 8 U.S.C. 1188 and the H-2A regulations as described in 29 CFR 501.7;

- For complaints arising under the H-2A regulations, the State Agency agrees to utilize the existing Job Service Complaint System, as described in 20 CFR part 658, subpart E, and as required by 20 CFR 655.185. Please note that these activities will be covered by existing Wagner-Peyser formula grants and not by the FLC grants that are the subject of this TEGL;
- For complaints involving allegation of fraud or misrepresentation, the State Agency agrees to refer all such complaints to the DOL CO at H2ASWA.Chicago@dol.gov for appropriate handling and resolution;
- For complaints involving contracts with workers, the State Agency agrees to refer all such complaints to the nearest local or regional office of the Wage Hour Division for appropriate handling and resolution, as described in 29 CFR part 501, and provide a copy of such referral to the DOL CO at H2ASWA.Chicago@dol.gov; and
- Complaints alleging that an employer discouraged an eligible U.S. worker from applying, failed to hire, discharged, or otherwise discriminated against an eligible U.S. worker, or discovered violations involving the same, the State Agency agrees to refer all such complaints to the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights section in addition to any activity, investigation, and/or enforcement action taken by the State Agency, and provide a copy of such referral to the DOL CO at H2ASWA.Chicago@dol.gov.

D. Permanent Labor Certification Program

- The State Agency’s labor exchange system is accessible to employers who are required to place a job order in connection with an *Application for Permanent Employment Certification*, as set forth in 20 CFR part 656, and facilitates the referral of qualified and available U.S. workers for consideration; and
- The State Agency understands that these labor exchange services are already covered by existing Wagner-Peyser formula grants; not by the FLC grants that are the subject of this TEGL.

E. Grantee Contact Information

H-2A Program Point-of-Contact

Last name	First name
Job title	
Address	

City	State	Postal code
Telephone number (including extension)	Fax number	
E-mail address		

H-2B Program Point-of-Contact (if different than the contact listed above)

Last name	First name	
Job title		
Address		
City	State	Postal code
Telephone number (including extension)	Fax number	
E-mail address		

Fiscal Grant Point-of-Contact (if different than the contact listed above)

Last name	First name	
Job title		
Address		
City	State	Postal code
Telephone number (including extension)	Fax number	
E-mail address		

OMB Paperwork Reduction Act (OMB Control Number 1225-0086)

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Public reporting burden for this collection of information is estimated to average 4 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate to the Office of Foreign Labor Certification • U.S. Department of Labor • Room 12-200 • 200 Constitution Ave., NW, • Washington, DC 20210.
